

<b>INFORMATION TO OFFERORS OR QUOTERS</b> <b>SECTION A - COVER SHEET</b>		Form Approved OMB No. 9000-0002 Expires Oct 31, 2001																			
The public reporting burden for this collection of information is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection (9000-0002), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person will be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.																					
<b>PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE ADDRESS IN BLOCK 4 BELOW.</b>																					
<b>1. SOLICITATION NUMBER</b>  <b>SP0600-01-R-0077</b>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">2. (X one)</td> <td style="width: 95%;"></td> </tr> <tr> <td style="text-align: center;">X</td> <td>a. INVITATION FOR BID (IFB)</td> </tr> <tr> <td></td> <td>b. REQUEST FOR PROPOSAL (RFP)</td> </tr> <tr> <td></td> <td>c. REQUEST FOR QUOTATION (RFQ)</td> </tr> </table>		2. (X one)		X	a. INVITATION FOR BID (IFB)		b. REQUEST FOR PROPOSAL (RFP)		c. REQUEST FOR QUOTATION (RFQ)										
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	c. REQUEST FOR QUOTATION (RFQ)																				
		<b>3. DATE/TIME RESPONSE DUE</b>  <b>AUGUST 9, 2001 (1PM LOCAL TIME)</b>																			
<b>INSTRUCTIONS</b>																					
<b>NOTE:</b> The provision entitled "Required Central Contractor Registration" applies to most solicitations.																					
1. If you are not submitting a response, complete the information in Blocks 9 through 11 and return to the issuing office in Block 4 unless a different return address is indicated in Block 7.																					
2. Offerors or quoters must include full, accurate, and complete information in their responses as required by this solicitation (including attachments). "Fill-ins" are provided on Standard Form 18, Standard Form 33, and other solicitation documents. Examine the entire solicitation carefully. The penalty for making false statements is prescribed in 18 U.S.C. 1001.																					
3. Offerors or quoters must plainly mark their responses with the Solicitation Number and the date and local time for bid opening or receipt of proposals that is in the solicitation document.																					
4. Information regarding the timeliness of response is addressed in the provision of this solicitation entitled "Late Submissions, Modifications, and Withdrawals of Bids" or "Instructions to Offerors - Competitive Acquisition."																					
<b>4. ISSUING OFFICE</b> (Complete mailing address, including Zip Code) ATTN DESC BZD RM 2954 DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J KINGMAN RD SUITE 4950 FAX (703) 767-8506 FORT BELVOIR VA 22060-6222		<b>5. ITEMS TO BE PURCHASED</b> (Brief description)  <table style="width: 100%;"> <tr> <td style="width: 15%;">F76</td> <td style="width: 45%;">426,970,000 USG</td> <td style="width: 40%;"><b>LOCATION:</b></td> </tr> <tr> <td>JP5</td> <td>203,200,000 USG</td> <td>WESTERN PACIFIC (WESTPAC)</td> </tr> <tr> <td>JP8</td> <td>428,258,000 USG</td> <td></td> </tr> <tr> <td>MUM</td> <td>37,590,000 USG</td> <td><b>DELIVERY PERIOD:</b></td> </tr> <tr> <td>RME-25</td> <td>26,400,000 USG</td> <td>January 01, 2002 thru December 31, 2003</td> </tr> <tr> <td></td> <td></td> <td>plus a 30-day carry-over period</td> </tr> </table>		F76	426,970,000 USG	<b>LOCATION:</b>	JP5	203,200,000 USG	WESTERN PACIFIC (WESTPAC)	JP8	428,258,000 USG		MUM	37,590,000 USG	<b>DELIVERY PERIOD:</b>	RME-25	26,400,000 USG	January 01, 2002 thru December 31, 2003			plus a 30-day carry-over period
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<b>6. PROCUREMENT INFORMATION</b> (X and complete as applicable)																					
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<b>7. ADDITIONAL INFORMATION</b>  a. This is the first Bulk Overseas solicitation with multi-year requirements. Offers are being solicited for the requirements on a one-year or two-year basis. The solicitation has been structured to allow for evaluation of both one-year and two-year offers. Requirements will be awarded for the delivery period that is determined to be in the Government's best interest.																					
b. SEND OFFERS TO THIS ADDRESS <div style="text-align: right;">           ATTN: DESC CPC BID CUSTODIAN RM 3729            DEFENSE ENERGY SUPPORT CENTER            8725 JOHN J KINGMAN RD SUITE 4950            FT BELVOIR VA 22060-6222            FAX # (703) 767-8506         </div>																					
SEE DD FORM 1707, Block 7 (Additional Information Continued)																					
<b>8. POINT OF CONTACT FOR INFORMATION</b>																					
a. NAME (Last, First, Middle Initial) YU, SAE-JIN		b. ADDRESS (include Zip Code) ATTN DESC-BZD RM 2954 DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J KINGMAN RD SUITE 4950 FORT BELVOIR VA 22060-6222																			
c. TELEPHONE NUMBER (Include Area Code and Extension) (703) 767-9496		d. E-MAIL ADDRESS sjyu@desc.dla.mil																			
<b>9. REASONS FOR NO RESPONSE</b> (X all that apply)																					
a. CANNOT COMPLY WITH SPECIFICATIONS		d. DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED																			
b. UNABLE TO IDENTIFY THE ITEM(S)		e. OTHER (Specify)																			
c. CANNOT MEET DELIVERY REQUIREMENT																					
<b>10. MAILING LIST INFORMATION</b> (X one)																					
WE <input type="checkbox"/> DO <input type="checkbox"/> DO NOT DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE INVOLVED.																					
11a. COMPANY NAME		b. ADDRESS (include Zip Code)																			
c. ACTION OFFICER																					
(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)		(2) TITLE																			
(3) SIGNATURE		(4) DATE SIGNED (YYYYMMDD)																			

FOLD

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FOLD

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FROM

AFFIX  
STAMP  
HERE

SOLICITATION NUMBER	
SP0600-01-R-0077	
DATE AUG 9, 2001	LOCAL TIME 1:00 P.M.

TO      ATTN: DESC-CPC BID CUSTODIAN RM 3729  
DEFENSE ENERGY SUPPORT CENTER  
8725 JOHN J KINGMAN RD SUITE 4950  
FORT BELVOIR VA 22060-6222  
USA

## DD Form 1707, Block 7 - ADDITIONAL INFORMATION CONT'D

- c. Sealed offers in original and 1 copy for furnishing the supplies or services in the Schedule will be received at the place specified in block 7 above. If hand carried, the depository is located in RM 3729 at DESC.
- d. For questions concerning Small Business matters, contact Ms. Kathy Williams at (703) 767-9400 or 1-800-523-2601.
- e. Standard Form (SF) 1449 and Segment I of this solicitation apply to both domestic and foreign concerns. Segment II applies to both domestic and foreign concerns to the extent that work is performed under any resultant contract within the United States or outside the United States by employees recruited within the United States.
- f. Offerors are advised to please complete and submit as your offer, the accompanying Offeror Submission Package. Certification and Representation clauses should be answered in either the affirmative or negative, as applicable. If a clause does not apply, LEAVE BLANK. (DO NOT state "N/A - Not Applicable.") Please initial all changes and corrections. Offerors must acknowledge receipt and acceptance of all amendments to this solicitation.
- g. NOTICE: Any contract awarded to a contractor who, at the time of award, was suspended, debarred, or ineligible for receipt of contracts with Government agencies, or was in receipt of a notice of proposed debarment from any Government agency, is voidable at the option of the Government.
- h. Offerors are advised that the inclusion of any provision which requires sequential evaluation of individual offers; i.e., offers requiring DESC to obtain more than one computer evaluation in order to evaluate that offer, may result in rejection of the offer. Offerors are encouraged to discuss the intended changes in proposals with DESC in order to identify potentially unacceptable proposals and to determine possible alternatives.
- i. For emergency situations during non-duty hours, the number to contact is (703) 767-8420 at the DESC Operations Center, Contingency Plans and Operations Division (DESC-DL).
- j. In order to be retained on the Western/Pacific bidder's mailing list, you must either respond to the solicitation or return the DD Form 1707 with the appropriate information in Blocks 9, 10, and 11. Failure to do so will result in deletion of your company from the bidder's mailing list. This includes all potential offerors and/or those receiving it for informational purposes only.
- k. Clause B19.34 ECONOMIC PRICE ADJUSTMENT (OVERSEAS BULK) - Initial offer price and base reference price date is June 1, 2001. For initial offers, assume date of lift to be June 1, 2001. The final proposed revision reference price effective date will be the same as the reference price established for initial offers.
- l. The "Standardized Format" as referenced in Clauses C16.01 TURBINE FUEL, AVIATION (JP4/JP5) (BULK) and C16.64-3 TURBINE FUEL, AVIATION (JP8) (WESTPAC) can be found in Section J, Attachment 2, STANDARDIZED FORMAT FOR USE IN THE PREPARATION OF AVIATION TURBINE FUEL TEST REPORT to this RFP.
- m. Clause G9.07 ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE - Offerors may elect payment by electronic transfer of funds through the Corporate Trade Payment (CTX) system. Offerors are advised to verify their financial institution's (FI) participation in the CTX system, and the acceptability of their procedures. Firms receiving an award under this solicitation must ensure that the appropriate arrangements are made with their FI prior to submission of the first invoice.
- n. **IMPORTANT:** Clause I86.12 DELIVERY-ORDER LIMITATIONS - SCOPE OF CONTRACT (BULK) provides the minimum and maximum quantities under a resultant contract. Please direct ATTENTION to paragraph (d) of this clause regarding the final order placed calling for delivery into, or by means of tanker, barge, or pipeline. The additional quantity for this final order (50,000 BBLs) now applies to each product offered from each refinery source. This additional quantity cannot exceed the monthly quantity as defined in Clause F1.25 DELIVERY AND ORDERING PERIODS.
- o. Please note that the offeror agrees to submit prior to award a Material Safety Data Sheet (MSDS) in accordance with Clause I190.04 MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS.
- p. Section J, Attachment 1, Central Contractor Registration (CCR) and Cage Code Instructions. New procedures are explained in this attachment to obtain a Cage Code and to apply for the Central Contractor Registration, which are required to do business with the U.S. Department of Defense (DoD). Also see DESC home page [www.desc.dla.mil](http://www.desc.dla.mil). Doing Business with DESC.
- q. Pursuant to Clause L2.11-2 FACSIMILE PROPOSALS, offers submitted by facsimile must constitute an offeror's hard copy. It must contain all required representations and certifications as well as all required signatures.
- r. The following tentative negotiation schedule is provided for planning purposes. Note this schedule is subject to change at any time:

August 9, 2001	Initial Offer Closing Date (1:00 p.m.)
September 11, 2001	Negotiations Open
October 25, 2001	Negotiations Close

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER SC0600-01-0334/0336/0337 & Amends		<b>PAGE 4 OF 11</b>	
2. CONTRACT NUMBER		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER <b>SP0600-01-R-0077</b>	
7. FOR SOLICITATION INFORMATION CALL: <b>CS</b>		a. NAME <b>SAE-JIN YU / DESC-BZD</b>				b. TELEPHONE NUMBER (no collect calls) <b>(703)767-9496</b>	
9. ISSUED BY  ATTN DESC BZD RM 2954 DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J KINGMAN RD SUITE 4950 FORT BELVOIR VA 22060-6222  SEE BLOCK 6 OF THE DD FORM 1707 FOR ADDRESS TO SEND OFFERS.  PP: 1.1A, 1.1C, 1.1H				10. THIS ACQUISITION IS  <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE % FOR  <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV BUSINESS  <input type="checkbox"/> 8(A) SIC: 2911-2  SIZE STANDARD: See Clause L2.05-2		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE	
						12. DISCOUNT TERMS	
				13a. THIS CONTRACT IS RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING	
				14. METHOD OF SOLICITATION  <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP			
15. DELIVER TO  SEE SCHEDULE				CODE			
17a. CONTRACTOR / OFFEROR  CODE				FACILITY CODE		18a. PAYMENT WILL BE MADE BY  CODE	
TELEPHONE NO. FAX NO.				DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER STOCK FUND DIRECTORATE FUELS ACCOUNTING AND PAYMENTS DIVISION ATTN: DFAS-FVSFA/CO P.O. BOX 182317 COLUMBUS OH 43218-6250			
[ ] 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED  [ ] SEE ADDENDUM			
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY		22. UNIT	
		SEE CLAUSE B1 (Attach additional Sheets as Necessary)					
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
[ ] 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA [ X ] ARE [ ] ARE NOT ATTACHED.							
[ ] 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA [ ] ARE [ ] ARE NOT ATTACHED.							
[ ] 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS AND CONDITIONS SPECIFIED HEREIN.				[ ] 29. AWARD OF CONTRACT: REFERENCE _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: _____.			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)				30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)	
						31c. DATE SIGNED	
32a. QUANTITY IN COLUMN 21 HAS BEEN [ ] RECEIVED [ ] INSPECTED [ ] ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED				33. SHIP NUMBER		34. VOUCHER NUMBER	
				[ ] PARTIAL [ ] FINAL		35. AMOUNT VERIFIED CORRECT FOR	
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE				32c. DATE		36. PAYMENT [ ] COMPLETE [ ] PARTIAL [ ] FINAL	
						37. CHECK NUMBER	
				38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	
						40. PAID BY	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				42a. RECEIVED BY (Print)			
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER				42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449  
Prescribed by GSA  
FAR (48 CFR) 53.212

The following clauses are utilized in lieu of the FAR Commercial Item Clauses cited in 27(A) of the Standard Form 1449.

**SECTION I**

<b>CLAUSE NUMBER</b>	<b>CLAUSE TITLE</b>	<b>PAGE(S)</b>
<b>I1.03-2</b>	<b>CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (BULK) (DESC MAR 2001)</b>	<b>6</b>
<b>I1.04</b>	<b>CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (FEB 2001)</b>	<b>7</b>
<b>I1.05</b>	<b>CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (MAR 2000)</b>	<b>9</b>
<b>I11.01-2</b>	<b>ADMINISTRATIVE COST OF TERMINATION FOR CAUSE -- COMMERCIAL ITEMS (DESC FEB 1996)</b>	<b>10</b>
<b>I190.04</b>	<b>MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS (DESC MAR 1996)</b>	<b>11</b>

**SECTION I****11.03-2 CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (BULK) (DESC MAR 2001)**

(a) **INSPECTION/ACCEPTANCE.** See Addendum.

(b) **ASSIGNMENT.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its right to receive payment under this contract.

(c) **CHANGES.** See Addendum.

(d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference. Also see Addendum.

(f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) **INVOICE.** The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on

Government bill of lading;

- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

(h) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Prompt payment discount will be applied to the total amount of each invoice. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date the invoice was received. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the date on which an EFT was made. Also see Addendum.

(j) **RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon--

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **TAXES.** See Addendum.

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purposes. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

**CLAUSE 11.03-2 cont'd**

(m) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) **WARRANTY.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.

(r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services;
- (2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;
- (3) The clause at 52.212-5;
- (4) Addenda to this solicitation or contract, including any license agreements for computer software;
- (5) Solicitation provisions if this is a solicitation;
- (6) Other paragraphs of this clause;
- (7) Standard Form 1449;
- (8) Other documents, exhibits, and attachments; and
- (9) The specification.

(FAR 52.212-4, **tailored**/DESC 52.212-9F40)

#### **11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (FEB 2001)**

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755);
- (2) 52.233-3, Protest After Award (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b), that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

**[Contracting Officer must check as appropriate.]**

☒ 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

☐ 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999).

☐ 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

☐ 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994). ☐ Alt I. ☐ Alt II.

**CLAUSE 11.04 cont'd**

- ☐ 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3)).
- ☐ 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).
- ☐ 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).
- ☐ 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer). ☐ Alt I.
- ☐ 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ☐ 52.219-26, Small Disadvantaged Business Participation Program - Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ☒ **52.222-19, *Child Labor – Cooperation with Authorities and Remedies (E.O. 13126).***
- ☐ 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- ☐ 52.222-26, Equal Opportunity (E.O. 11246).
- ☐ 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- ☐ 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- ☐ 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- ☐ **52.223-9, *Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).*** ☐ **Alt I (42 U.S.C. 6962(i)(2)(C)).**
- ☐ 52.225-1, Buy American Act - Balance of Payments Program - Supplies (41.U.S.C. 10a - 10d).
- ☐ 52.225-3, Buy American Act - North American Free Trade Agreement - Israeli Trade Act - Balance of Payments Program (41 U.S.C 10a - 10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note). ☐ Alt I. ☐ Alt II.
- ☒ 52.225-5, Trade Agreements (19 U.S.C 2501, et seq., 19 U.S.C. 3301 note).
- ☒ 52.225-13, Restriction on Certain Foreign Purchases (E.O.'s 12722, 12724, 13059, 13067; 13121, and 13129).
- ☐ 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
- ☐ 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
- ☒ 52.232-33, Payment by Electronic Funds Transfer -- Central Contractor Registration (31 U.S.C. 3332).
- ☐ 52.232-34, Payment by Electronic Funds Transfer -- Other than Central Contractor Registration (31 U.S.C. 3332).
- ☐ 52.232-36, Payment by Third Party (31 U.S.C. 3332).
- ☐ 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
- ☐ 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241). ☐ Alt I.

(c) The Contractor shall comply with FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:



**CLAUSE 11.04 cont'd**

**[Contracting Officer must check as appropriate.]**

☐ 52.222-41, Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

**Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in FAR 22.1103-4(c) or (d) (see DoD Class Deviation number 2000-O0006).**

☐ 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

☐ 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

☐ 52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

☐ 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 et seq.).

☐ 52.222-50, Nondisplacement of Qualified Workers (E.O. 129333).

(d) **COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, AUDIT AND RECORDS - NEGOTIATION.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by any addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components:

52.222-26, Equal Opportunity (E.O. 11246);

52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212); and

52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(FAR 52.212-5)

## **11.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (MAR 2000)**

(a) The Contractor agrees to comply with any clause that is checked on the following list of DFARS clauses which, if checked, is included in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components.

☒ 252.205-7000 Provision of Information to Cooperative Agreement Holders (10 U.S.C. 2416)

☐ 252.206-7000 Domestic Source Restriction (10 U.S.C. 2304)

**CLAUSE I1.05 cont'd**

- ☐ 252.219-7003 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (15 U.S.C. 637)
- ☐ 252.225-7001 Buy American Act and Balance of Payments Program (41 U.S.C. 10a-10-d, E.O. 10582)
- ☒ 252.225-7007 Buy American Act -Trade Agreements Act - Balance of Payments Program (41 U.S.C. 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note)
- ☐ 252.225-7012 Preference for Certain Domestic Commodities
- ☐ 252.225-7014 Preference for Domestic Specialty Metals (10 U.S.C. 2341 note)
- ☐ 252.225-7015 Preference for Domestic Hand or Measuring Tools (10 U.S.C. 2241 note)
- ☐ 252.225-7021 Trade Agreements (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note)
- ☐ 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779)
- ☐ 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (22 U.S.C. 2755)
- ☐ 252.225-7029 Preference for United States or Canadian Air Circuit Breakers (10 U.S.C. 2534(a)93)
- ☐ 252.225-7036 Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program ( ☐ Alt I) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note)
- ☐ 252.227-7015 Technical Data Commercial Items (10 U.S.C. 2320)
- ☐ 252.227-7037 Validation of Restrictive Markings on Technical Data (10 U.S.C. 2321)
- ☒ 252.243-7002 Requests for Equitable Adjustment (10 U.S.C. 2410)
- ☐ 252.247-7023 Transportation of Supplies by Sea ( ☐ Alt I), ( ☐ Alt II) (10 U.S.C. 2631)
- ☐ 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631)

(b) In addition to the clauses listed in paragraph (e) of the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS clause of this contract (Federal Acquisition Regulation 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract.

- ☐ 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note)
- ☐ 252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631)
- ☐ 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631)

(DFARS 252.212-7001)

**I11.01-2 ADMINISTRATIVE COST OF TERMINATION FOR CAUSE -- COMMERCIAL ITEMS (DESC FEB 1996)**

(a) In the event this contract is terminated for cause, in whole or in part, the Government will incur administrative costs.

(b) The Contractor agrees to pay all administrative costs associated with a contract termination action. The minimum amount the Contractor shall pay for each termination action is \$500. This payment for administrative costs is in addition to any excess procurement costs and any other remedies or damages resulting from the termination.

(c) The term **termination action**, as used herein, means the termination for cause, including any associated procurement effort, involving--

- (1) Any single order or any group of orders terminated together;

**CLAUSE I11.01-2 cont'd**

- (2) Any item or group of items terminated together; or
- (3) The entire contract.

(DESC 52.249-9F20)

**I190.04 MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS (DESC MAR 1996)**

(a) The apparently successful offeror agrees to submit, for each item prior to award, a Material Safety Data Sheet (MSDS), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all items to be delivered under this contract. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the MSDS prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(b) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, that renders incomplete or inaccurate the data submitted under paragraph (a) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(c) The Contractor shall submit MSDSs to the Contracting Officer. MSDSs must cite the solicitation number, the applicable CAGE code of the manufacturer, and, where so identified, the National Stock Number (NSN).

(d) The offeror need not submit a duplicate MSDS for a product for which the offeror has submitted an MSDS within the past five years. The MSDS of record must fully comply with the latest revision of FED-STD-313, and the data on the MSDS must still be current and complete. Should the description/composition of the product offered differ in any area specified on a previously submitted MSDS, a new MSDS is required.

(DESC 52.223-9F05)